REMARKS

Claims 1-7 are pending in the present application, and stand rejected. Reconsideration and allowance of the claims are respectfully requested in view of the following remarks.

Claims 1-7 stand rejected under 35 U.S. C. § 103(a) as being unpatentable over Frank. (U.S. Patent No. 5,698,019). In making the rejection, the Examiner states that the Frank reference discloses a material that comprises the claimed components including amounts that overlap with those of the claimed components. The Examiner specifically notes the material contains leucite crystalline and all crystalline phase preferably have an average size of less than 3 microns. The Examiner states

> Because of the similarity of the components and ranges, it appears that the instant maturing temperature and coefficient of thermal expansion would be inherent in the materials of Frank.

(Office Action, p. 2.)

The Applicants respectfully disagree with the Examiner based on the following. Frank teaches crystalline phases preferably having an average size of less than 3 microns. As is well known, "average" particle sized say nothing regarding absolute particle size. A composition having an average particle size may include, for example, particles 40 microns in diameter. In contrast, the present invention claims crystallites having diameters not exceeding about 10 microns. As is taught in the specification, diameters in excess of about 10 micron will impart an undesirably rough and uneven surface to the composition, resulting in wearing away local dentition and causing discomfort or irritation inside the oral cavity. Hence, this requires that the particles have less than 10 microns in diameter. The

Frank reference does not teach or suggest all particles less than 10 microns as is claimed in the present invention.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). It has been shown that the Frank reference does not disclose the less than 10 micron diameter, an element of independent claim 1. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent Claims 2-7 are nonobvious as well.

For the reasons discussed above, Applicants respectfully submit that Applicants' Claims 1-7 patentably distinguish over Frank. Therefore, Applicants request that the Examiner now reconsider and withdraw the rejections of Claims 1-7 under 35 U.S.C. 103(a) as being unpatentable.

With respect to the Examiner's request for additional information regarding resolution of the dispute regarding evidence in the current litigation entitled Jeneric/Pentron Inc. v. Dillon Company, Inc. and Chemichl, Inc. and to Examiner's request for information as to how the components and properties of the claims are the same as or different from the material (LF-1-PFM) asserted by Chemichl, Inc. "to be distributed in the United States," Applicant refers the Examiner to the Information Disclosure Statement which accompanies this Response. As to the current status of the litigation, the parties are presently awaiting the judge's decision on their respective motions for Summary Judgment argued in August of 2000.

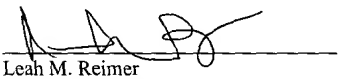
It is believed that the foregoing remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Response or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' Attorneys.

Respectfully submitted,

CARLINO PANZERA ET AL

CANTOR COLBURN, LLP
Applicants Attorneys

By: 
Leah M. Reimer
Registration No. 39,341
Customer No. 23413

Date: March 19, 2001
Address: 55 Griffin Road South, Bloomfield, Connecticut 06002
Telephone: (860) 286-2929